

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-031-12-1-5-20385-15
Petitioner: Peter Jonas, LLC
Respondent: Lake County Assessor
Parcel: 45-12-04-155-024.000-031
Assessment Year: 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Peter Jonas, LLC (“Petitioner”) filed its appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”), which issued notice of its final determination on June 16, 2015. Petitioner then filed its Form 131 petition with the Board, electing to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
2. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on July 25, 2016. Neither the ALJ nor the Board inspected the property.
3. David Tokar, property manager, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer; Kathleen McMullin, Ross Township Assessor’s Office Supervisor; and Nicole Ooms, Ross Township Deputy Assessor, were sworn as witnesses for Respondent.

Facts

4. The subject property is a single-family home located at 1310 W. 56th Avenue in Merrillville.
5. For 2012, the PTABOA determined the land to be \$24,600 and the improvements \$70,600 for a total of \$95,200.

Record

6. The official record contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits:

Petitioner Exhibit 1:	Appraisal of the subject property by Buford Eddy
Petitioner Exhibit 2:	Appraisal of 5431 Pierce Street
Petitioner Exhibit 3:	Parcel Identification Information for 5431 Pierce Street
Petitioner Exhibit 4:	Parcel Identification Information for the subject property
Respondent Exhibit 1:	Appraisal of the subject property by Buford Eddy
Respondent Exhibit 2:	Multiple Listing Service (“MLS”) information and property record card (“PRC”) for comparable #1 in the appraisal
Respondent Exhibit 3:	MLS information and PRC for comparable #2 in the appraisal
Respondent Exhibit 4:	MLS information and PRC for comparable #3 in the appraisal
Respondent Exhibit 5:	MLS information and PRC for comparable #4 in the appraisal
Respondent Exhibit 6:	Comparable sales chart
Respondent Exhibit 7:	PRC and picture for the subject property
Respondent Exhibit 8:	PRC, picture, and sales disclosure form for 5585 Van Buren Street
Respondent Exhibit 9:	PRC, picture, and sales disclosure form for 344 W. 55 th Lane
Respondent Exhibit 10:	PRC, picture, and sales disclosure form for 5567 Jefferson Place
Board Exhibit A:	Form 131 petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

Objections

7. Mr. Metz objected to Petitioner Exhibit 2, the appraisal of 5431 Pierce Street, because he claims it was not relevant to the appeal of the subject property. The objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibit 2 over the objection.

8. Mr. Tokar objected to Respondent Exhibits 7-10, claiming Respondent “cherry-picked” the properties and they were not representative of the area. Further, he contends they were probably not REOs or foreclosures, of which there were many in the area. The objection goes to the weight of the evidence rather than its admissibility. Therefore, the Board admits Petitioner Exhibits 7-10 over the objection.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
11. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessment decreased from 2011 to 2012. Petitioner, therefore, has the burden of proof in this matter.

Summary of Parties' Contentions

14. Petitioner's case:
 - a. Petitioner contends that the property is over-assessed based on an appraisal prepared by Buford L. Eddy, a certified residential appraiser. Mr. Eddy prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") and estimated the value at \$70,000 as of February 28, 2012. *Tokar testimony; Pet'r Ex. 1.*

- b. The property at 5431 Pierce Street is located approximately two blocks from the subject property and is also owned by Petitioner. It was appraised at \$65,000 as of July 23, 2013. The property is very similar to the subject property except that it has a finished basement and the subject property does not. The bank ordered the Pierce Street appraisal for refinancing purposes and engaged a different appraiser. Petitioner contends that it is significant that the two appraisals, undertaken for different purposes and by different appraisers, are consistent with one another. He claims that the consistency between the two lends further credibility to Mr. Eddy's estimate of value. *Tokar testimony; Pet'r Ex. 2.*
- c. Petitioner contends that the subject area was adversely affected during the subprime mortgage crisis. More than 50% of the properties sold around that time were foreclosures, REOs, and repossessions. Several people lost their homes. Petitioner does not believe Respondent should be able to discount a valid appraisal in favor of properties located farther away just because of those adverse conditions. *Tokar testimony.*
- d. Petitioner contends that Respondent "cherry-picked" several of his purportedly comparable sales. Petitioner contends they are not representative of the area and he suspects that none of them are REOs or repossessions, even though there are several of those located in the subject area. *Tokar testimony.*
- e. Based on the appraisal and the surrounding circumstances, Petitioner contends that the property is over-assessed for 2012 and that the correct assessed value should be \$70,000.

15. Respondent's case:

- a. Respondent contends that there are several problems with Petitioner's appraisal of the subject property, including:
 - The square footage of Petitioner's comparable sale #3 is incorrect. Respondent contends that it actually consists of 1,316 square feet and not 1,139 square feet, as the appraisal indicates.
 - The appraiser made adjustments for certain sales financing concessions. Respondent contends such concessions are generally not considered in an appraisal for ad valorem purposes. Furthermore, there is no explanation for the \$10,000 adjustment made to Petitioner's comparable sale #1.
 - The appraiser made certain condition adjustments that do not appear to be substantiated by the photographs.
 - The overall adjustment percentages to Petitioner's comparable sales are quite significant. Comparable sale #1 was adjusted by 20%, comparable sale #2 was adjusted by 32%, comparable sale #3 was adjusted by 20%, and comparable #4 was adjusted by 24%.

- Comparable sales #1 and #2 are both invalid sales. They were not arm's-length transactions, yet the appraiser states those are the two sales to which he gave the most weight.
- Under the appraiser's cost approach, there is no explanation for the \$10,000 land value attributed to the subject property. If one were to use the actual value of the land in combination with the value of the improvements, the overall value would be much closer to the assessed value.
- The fact that 5431 Pierce Street, a house with a finished basement, has a lower appraised value than the subject property, which does not have a finished basement, makes no sense. *Ooms testimony*.

McMullin testimony; Ooms testimony; Resp't Ex. 1.

- b. Respondent presented a sales comparison grid to support the assessed value. Ms. McMullin testified that she found ten valid sales in the subject neighborhood. From those ten sales, she presented three sales that she believed were the most comparable to the subject property. To support the purportedly comparable sales, Respondent presented PRCs and sales disclosure forms for each one. Respondent made adjustments for size, exterior features, grade, and garage size using the appraiser's adjustments, and also using the State of Indiana cost manual. Respondent calculated an average price of \$108,840 and a median price of \$103,300 using the appraiser's adjustments. Based on the cost manual adjustments, she calculated an average price of \$109,087 and a median price of \$101,760. *McMullin testimony; Resp't Exs. 6, 8-10.*

ANALYSIS

16. Petitioner established a prima facie case for a reduction in the assessed value. Respondent failed to sufficiently rebut or impeach Petitioner's prima facie case. The Board reached this decision for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. An appraisal performed in conformance with generally recognized appraisal principles is often enough to establish a prima facie case for a property's market value-in-use. *Meridian Towers*, 805 N.E.2d at 479. Here, Petitioner presented a USPAP compliant appraisal of the property prepared by Buford L. Eddy, a certified residential appraiser. Mr. Eddy estimated the value at \$70,000 as of February 28, 2012. Therefore, Petitioner established a prima facie case that the assessment should be reduced.
- d. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent attempted to impeach Petitioner's appraisal in several ways. In one instance, Respondent argued that the appraiser made adjustments for sales concessions, which is not typical in an appraisal for ad valorem purposes. Respondent did not offer any evidence to support that argument. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).
- f. Respondent questioned the appraiser's adjustments for condition and the overall adjustment percentages. In the Supplemental Addendum, the appraiser explained his rationale for the adjustments:
- Comparable sale #1 was adjusted for distressed sale conditions and the assumed physical condition of the property.
 - Comparable sale #2 was an REO when it sold on July 1, 2011, for \$40,000. It was rehabilitated and sold on February 29, 2012, for \$70,900. It required a significant adjustment because it was larger than the subject. It also required adjustments for a two-car garage and a fenced yard.
 - Comparable sale #3 was an REO when it sold on September 9, 2011 for \$45,199. It was rehabilitated and sold on January 1, 2012, for \$105,000. It required adjustments for a finished basement, a screened porch, and a fenced yard.

- Comparable sale #4 required significant adjustments due to a superior condition, a finished basement, and other differences.

And Respondent offered no substantial evidence or argument that these adjustments were improper or wrong.

- g. Respondent contends that neither comparable sale #1 nor #2 was transacted at arm's length, even though the appraiser states those are the two sales to which he gave the most weight. Again, Respondent offered no substantial evidence or argument about why those were not arm's length sales. When sales occurring as a result of foreclosures by a lender become the norm in an area, they may become indicators of market value-in-use for the properties in that area. An informed buyer would not be willing to purchase a home from an individual acting as the seller when the buyer could purchase an equally desirable property for a lower price from a lender. In this case, as noted previously, the appraiser found that only three out of seven sales were not REO or foreclosure sales. It is well within an appraiser's expertise to choose sales he deems most comparable and to apply adjustments to value the differences between them. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 278 (Ind. Tax Ct. 2005).
- h. Respondent contends comparable sale #3 consists of 1,316 square feet and the appraiser used 1,139 square feet. The appraiser used the same square footage as that shown on the MLS information sheet presented as Respondent Exhibit 4. It is not clear that the appraiser's square footage is in error. This point also fails to create any substantial doubt about the reliability of the Eddy appraisal.
- i. Respondent's Exhibit 6 is an analysis of three properties in Ross Township that are purportedly comparable to the subject property. In order to use a sales comparison approach as evidence in an assessment appeal, however, the party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative evidence. *Long*, 821 N.E.2d at 470-471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market value-in-use. *Id.*
- j. Other than stating that they were located in the same neighborhood, Ms. McMullin did little to show the properties were comparable to the subject property. While she made a few adjustments for some of the differences between the subject property and the purportedly comparable properties, her comparison falls short of the level of contemplated by *Long*. Furthermore, there is no indication that Respondent's sales comparison analysis conforms to generally accepted appraisal principles.

- k. Because Respondent did not offer sufficient evidence to show the market value-in-use of the subject property, Respondent failed to rebut Petitioner's prima facie case.

CONCLUSION

17. Petitioner established a prima facie case for a reduction in the assessed value. Respondent failed to rebut Petitioner's evidence. Consequently, the Board finds for Petitioner.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessed value must be changed to \$70,000.

ISSUED: October 24, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.